UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

EAGLE RAY ELECTRIC COMPANY)
Employer/Respondent,)
and))) Case 14-CA-29785
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL #1, AFL-CIO,)
Union/Charging Party.)

LOCAL 1'S STATEMENT IN SUPPORT OF GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, International Brotherhood of Electrical Workers, Local #1, AFL-CIO, ("Local 1" or the "Union"), and in response to the Board's Notice to Show Cause hereby files this statement in support of General Counsel's Motion for Summary Judgment in this matter, and respectfully requests the Board to enter summary judgment against Respondent Eagle Ray Electric Company ("Respondent"). In support thereof, Local 1 states as follows:

Respondent admits in its Answer to the Complaint that it ceased operations and laid-off all Unit employees, (Resp. Answer \P 5(A)), that the Union requested that Respondent bargain collectively with the Union over the effects of its cessation of operations, (Resp. Answer \P 5(B)-(C)), and that Respondent failed to give the Union notice of its decision to cease operations and has failed and refused to bargain with the Union over the effects of its cessation of operations and the resulting lay-offs, (Resp. Answer at \P 5(D)-(E).) In a nutshell, Respondent's defenses are that: (1) the NLRB is

acting as an advocate of the Union, (2) Respondent is winding down operations, and (3) the Board improperly certified the Union. Respondent raises no genuine issue of material fact. The Board can therefore decide this case on the pleadings, and order Respondent to bargain with the Union and make employees whole.

First, Respondent cannot argue that the Board is acting as an advocate for the IBEW. This defense is in reference to the Board's decision in the underlying representation case in this matter, adopting the Regional Director's recommendation to overrule certain objections filed by Intervenor Congress of Independent Unions (the "CIU") to the election at Respondent's workplace, and certifying Local 1 as the exclusive representative of the Unit. See Eagle Ray Electric Company, Case 4-RC-12739 (Feb. 24, 2009). Respondent does not have the right to re-litigate these objections. The CIU made the same argument about the Board acting as an advocate in its exceptions to the Regional Director's recommendation, and the Board rejected it. Moreover, Respondent is seeking to take advantage of its own misconduct. The CIU contended in its objections that Respondent threatened employees with termination for supporting the CIU. Respondent cannot now claim that it threatened employees, as the CIU alleged, with the hopes of benefitting from its wrong-doing, and escaping its obligation to bargain with Local 1. To permit Respondent to take advantage of its own objectionable conduct in this manner would only encourage employers to commit more unfair labor practices. This is contrary to the purposes of the Act. Douglas County Electric Membership Corporation, 148 NLRB 559, 567 (1964) (employer cannot argue that its own unfair labor practices are a basis for withdrawing certification to winning

union; employer cannot be permitted to profit from its own wrongdoing); *Springfield Hospital*, 281 NLRB 643, 693 (1986) (employer cannot benefit from its own misconduct to set aside election).

Second, Respondent claims that it is winding down operations. This is not a defense, but the crux of the matter. There is no economic defense to refusing to bargain, when economics is the very reason for bargaining. The Board has long held that an employer must, at minimum, bargain with a union over the effects of any decision to close. See First National Maintenance Corp. v. NLRB, 452 U.S. 666, 681-682 (1981); U-Haul Co. of Nevada, 345 NLRB 1301 (2005).

Third, Respondent claims that Local 1 was improperly certified. While not completely clear, Respondent most likely argues that the Board lacked a quorum when it certified Local 1 as the exclusive representative of Unit employees. This is not a factual issue that prevents summary judgment. Pursuant to Section 3(b) of the Act, Chairman Liebman and Member Schaumber constituted a quorum and had the authority to issue their decision certifying Local 1 in the underlying representation proceeding in this matter. Thus, Local 1 was properly certified, and Respondent has a duty to bargain with Local 1 over the effects of its cessation of operations.

WHEREFORE, Local 1 respectfully requests the Board to enter summary judgment against Respondent. The Board should order Respondent to bargain with the Union and make whole Unit employees in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Respectfully submitted,

SCHUCHAT, COOK & WERNER

Christopher N. Grant (M.B.E. #58507)

1221 Locust Street, Second Floor

St. Louis, MO 63103-2364

(314) 621-2626 FAX: 314-621-2378

E-Mail: cng@schuchatcw.com

CERTIFICATE OF SERVICE

Pursuant to the National Labor Relations Board's Rules and Regulations, Section 102.114, a true and correct copy of the foregoing was served via electronic mail, on this 13th day of October 2009, upon the following:

Mr. James Foster
McMahon Berger, P.C.
2730 North Ballas Road, Suite 200
P.O. Box 31901
St. Louis, Missouri 63131
(314) 567-7350
Foster@mcmahonberger.com

Ms. Christal J. Key Mr. Patrick H. Myers National Labor Relations Board, Region 14 1222 Spruce Street, Room 8.302 St. Louis, Missouri 63103 Christal.Key@nlrb.gov

Christopher N. Grant

cc: Bob Taylor, Local 1 Larry Palazzolo, Local 1

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